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8 UNITED STATES DISTRICT COURT  
 9 NORTHERN DISTRICT OF CALIFORNIA  
 10 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA EX REL.	)	CASE NO. 16-CV-314 JSC
12 YUXIN "JAY" FANG,	)	
13 Plaintiff,	)	NOTICE OF INTERVENTION FOR PURPOSES
14 v.	)	OF SETTLEMENT; NOTICE OF DECLINATION
15 FORTINET INC. and ARROW ENTERPRISE	)	AS TO ONE DEFENDANT; [PROPOSED ORDER]
16 COMPUTING SOLUTIONS INC.,	)	TO UNSEAL
17 Defendants.	)	
	)	<b><u>FILED UNDER SEAL</u></b>

18 1. The United States, Relator and Defendant Fortinet Inc. ("Fortinet") have reached an  
 19 agreement to resolve this action. In light of this agreement, and for the purpose of effectuating and  
 20 formalizing that resolution, pursuant to the False Claims Act, 31 U.S.C. §§ 3730(b)(2) and (4), the  
 21 United States respectfully advises the Court of its decision to intervene in this action for the purposes of  
 22 settlement. Specifically, the United States intervenes in this action with respect to civil claims  
 23 predicated upon the following factual allegations (the "Covered Conduct"):

24 During the period between January 1, 2009 and the fall of 2016, a Fortinet employee who  
 25 was responsible for supply chain management (the "Responsible Employee"), who has  
 26 since been terminated, directed that the labels be changed on certain products to make the  
 27 products appear compliant with the [Trade Agreement Act ("TAA")]. Specifically, the  
 Responsible Employee directed certain employees and contractors to change the labels  
 such that there was no country of origin listed or to include the phrases "Designed in the

28 <sup>1</sup> Civil Chief Sara Winslow is not supervising this case due to a conflict.

1 United States and Canada,” or “Assembled in the United States.” The Responsible  
2 Employee’s actions involved products sold to certain distributors that subsequently sold  
3 them to resellers, which in turn sold a portion of them to U.S. government end users.  
4 While Fortinet believes that some of the products at issue may have been compliant with  
5 the TAA, the Responsible Employee’s actions were in clear violation of well-established  
6 company policy. Upon learning of the Responsible Employee’s unauthorized actions,  
7 Fortinet promptly placed him on leave of absence while the company conducted an  
8 internal investigation with the assistance of outside counsel. Subsequent to the  
9 conclusion of this investigation, the company terminated the employment of the  
10 Responsible Employee.

11 2. The United States respectfully requests that the Complaint, the Amended Complaint, the  
12 Summons, the Case Scheduling Order, and the United States’ Notice of Intervention for Purposes of  
13 Settlement and Proposed Order to Unseal be unsealed. The United States further requests that all other  
14 papers on file in this action remain under seal because in discussing the content and extent of the United  
15 States’ investigation, such papers are provided by law to the Court alone for the sole purpose of  
16 evaluating whether the seal and time for making an election to intervene should be extended.

17 3. Under the terms and conditions of a settlement agreement among the parties, the Parties  
18 will file a Stipulation of Dismissal in this action following the payment of the settlement amount.

19 4. Pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(4)(B), the United States notifies  
20 the Court of its decision not to intervene in this action as to Arrow Enterprise Computing Solutions Inc.

21 5. Although the United States declines to intervene, we respectfully refer the Court to 31  
22 U.S.C. § 3730(b)(1), which allows the relator to maintain the action in the name of the United States;  
23 providing, however, that the “action may be dismissed only if the court and the Attorney General give  
24 written consent to the dismissal and their reasons for consenting.” *Id.* The United States Court of  
25 Appeals for the Ninth Circuit has held that, notwithstanding this language, the United States has the  
26 right only to a hearing when it objects to a settlement or dismissal of the action. *U.S. ex rel. Green v.*  
27 *Northrop Corp.*, 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d  
28 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should either the Relator or the  
Defendant propose that this action be dismissed, settled, or otherwise discontinued, this Court provide  
the United States with an opportunity to be heard before ruling or granting its approval.

Furthermore, 31 U.S.C. § 3730(c)(3) permits the Government to be served with copies of all

1 pleadings filed in the action. Accordingly, the undersigned Government counsel will file a Notice of  
2 Appearance for the purpose of receiving ECF notifications of filings in this case. The United States  
3 reserves its right to order any deposition transcripts and to intervene in this action, for good cause, at a  
4 later date. The United States also reserves its right to seek the dismissal of the relator's action or claim  
5 pursuant to 31 U.S.C. § 3730(c)(2)(A), and to request a stay of discovery pursuant to 31 U.S.C.  
6 § 3730(c)(4).

7  
8 DATED: April 8, 2019

Respectfully submitted,

9 DAVID L. ANDERSON  
United States Attorney

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11 ELLEN LONDON  
Assistant United States Attorney  
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**[PROPOSED] ORDER TO UNSEAL**

The United States having intervened in this action as to Fortinet Inc. for purposes of settlement pursuant to the False Claims Act, 31 U.S.C. §§ 3730(b)(2) and (4), the Court rules as follows:

IT IS ORDERED that,

1. The seal shall be lifted upon Relator's Complaint, the Amended Complaint, the Summons, the Case Scheduling Order, the United States' Notice of Intervention for Purposes of Settlement and Proposed Order to Unseal, this Order to Unseal, and any subsequent filings in this case.
2. All other papers or Orders on file in this matter shall remain under seal except to the extent unsealed or authorized to be unsealed by prior or subsequent Order of this Court.
3. Counsel for the United States shall file a notice of appearance in this action for the purpose of receiving ECF notifications of all pleadings and motions filed in this action, as provided for in 31 U.S.C. § 3730(c)(3). The United States may order any deposition transcripts and is entitled to intervene in this action, for good cause, at any time; and
4. Should the Relator or the Defendant propose that this action be dismissed, settled, or otherwise discontinued, the Court will provide the United States with an opportunity to be heard before ruling or granting its approval, in accordance with 31 U.S.C. § 3730(b)(1).

IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JACQUELINE SCOTT CORLEY  
UNITED STATES MAGISTRATE JUDGE

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the Northern District of California and is a person of such age and discretion to be competent to serve papers. The undersigned further certifies that she is causing a copy of the following:

**NOTICE OF INTERVENTION FOR PURPOSES OF SETTLEMENT; NOTICE OF DECLINATION AS TO ONE DEFENDANT; [PROPOSED ORDER] TO UNSEAL**

**FILED UNDER SEAL**

to be served this date upon the party in this action by placing a true copy thereof in a sealed envelope, and served as follows:

☒ **FIRST CLASS MAIL** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **CERTIFIED MAIL (# )** by placing such envelope(s) with postage thereon fully prepaid in the designated area for outgoing U.S. mail in accordance with this office's practice.

☐ **ELECTRONIC MAIL**

☐ **FEDERAL EXPRESS**

☐ **PERSONAL SERVICE (BY MESSENGER)**

☐ **FACSIMILE (FAX)** Telephone No.: See Below

to the party(ies) addressed as follows:

H. Vincent McKnight, Jr.  
Sanford Heisler Kimpel, LLP  
700 Pennsylvania Ave SE, Suite 300  
Washington, DC 20003

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on April 8, 2019 at San Francisco, California.

  
\_\_\_\_\_  
BONNY WONG  
Legal Assistant